THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.1317 of 2004

Date: 02.01.2007

Between:

D.S. Rajendranath.

….. Petitioner

and

Union of India rep., by its Secretary, Ministry of Labour, Govt. of India, Shram Shakti Bhavan, Rafi Marg, New Delhi and two others.

… Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.1317 of 2004

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order in O.A.164 of 2003 dated 12.9.2003, and R.A.No.78 of 2003 in O.A.164 of 2003 dated 5.12.2003, of the Hyderabad bench of the Central Administrative Tribunal, the present writ petition is filed. O.A.164 of 2003 was filed by the petitioner - applicant to quash the orders of the 3rd respondent dated 4.1.2003 and 4.2.2003 and for a declaration that he is entitled to be continued on a regular basis as a senior clerk in the respondent – organization.

Facts, in brief, are that the petitioner – applicant was appointed as a clerk with effect from 8.7.1986. He was transferred and posted in the office of the Welfare Commissioner in 1988. Sri Kader Vali, a senior clerk who was discharging the duties of the head clerk-cum-accountant in the office of the Welfare Administrator, went on sick leave. The respondents sought to fill up the consequential leave vacancy and Sri Krishna Reddy, who was then working as a senior clerk in the office of the 3rd respondent, was promoted against the leave vacancy in the post of head clerk cum accountant. As a result of Sri Krishna Reddy being promoted on an adhoc basis, as a head clerk- cum-account, the post of the senior clerk, which he hitherto held, fell vacant.

The Departmental Promotion Committee (DPC) which was convened on 18.6.1996 offered to promote Smt. M. Padma Latha who was the senior most junior clerk amongst the scheduled caste candidates. While Sri M. Suri Babu stood at Sl.No.2 in the said list, the petitioner stood at Sl.No.3. Since Smt. M. Padmalatha declined to accept the offer of promotion, and Sri M. Suribabu could not be considered in view of the disciplinary proceedings pending against him, the DPC again met on 26.11.1996 and, on reviewing the annual confidential reports of the petitioner, who was next in the seniority list of candidates under the S.C. Category, and as his annual confidential reports for the last five years were found to be clear, decided to promote him to the next higher grade of senior clerk with effect from 26.11.1996. According to the petitioner, Sri Khadar Vali passed away when he was on leave and Sri Krishna Reddy, who held the post of head clerk cum accountant in the leave vacancy, continued to hold the post till he retired from service on 31.7.1997. Consequent on the retirement of Sri Krishna Reddy, a regular vacancy of senior clerk arose on 1.8.1997 and the respondents issued proceedings dated 27.2.1998 promoting the petitioner – applicant as a senior clerk on a regular basis with retrospective effect from 1.8.1997. The 3rd respondent issued proceedings dated 29.11.2002 calling upon the petitioner– applicant to show cause as to why the earlier proceedings dated 27.2.1998, promoting him to the post of senior clerk on a regular basis with effect from 1.8.1997, not be cancelled and he not be reverted to the post of junior clerk. In the said show cause notice dated 29.11.2002, the 3rd respondent stated that the intention of the DPC, which was convened on 18.6.1996, was to offer

promotion as a senior clerk purely on an adhoc basis and even though the rule of reservation was not required to be followed in the case of adhoc promotions, the DPC had chosen to fill up the vacancy with a candidate belonging to the scheduled castes, that the DPC had accordingly decided to promote Smt. M. Padma Latha to the post of senor clerk and, as Smt. Padma Latha had refused the said offer of adhoc promotion and Sri M. Suri Babu who was next in the seniority list of junior clerks was found unfit for promotion, the DPC in its meeting held on 26.11.1996 offered to promote the petitioner as a senior clerk and that the petitioner was promoted on 29.11.1996. The 3rd respondent noted that a regular vacancy had arisen only on 1.8.1997, that in accordance with the rules, regular promotions to the post of senior clerks could only have been effected on a DPC being convened after 1.8.1997 wherein the claims of all eligible scheduled caste candidates, including that of Smt.M. Padmalatha, should have been considered since she had earlier refused only the adhoc promotion that too a year and half prior to the date when the regular vacancy had arisen. In the said show cause notice dated 29.11.2002 the 3rd respondent stated that, though the petitioner was at Sl.No.11 in the seniority list of the junior clerks, the then Welfare Commissioner had offered him regular appointment of a senior clerk without even convening the DPC and without even considering the claims of other scheduled caste candidates. The 3rd respondent held that, in view thereof, the petitioner's promotion as a senior clerk may have to be treated as void abinitio as it had caused grave injustice to the senior staff including the scheduled caste candidates. The petitioner was requested to show cause as to why he should not

be reverted back as a junior clerk and why the DPC should not be convened to consider the claims of all the eligible candidates for promotion to the post of senior clerk.

The petitioner submitted his reply thereto on 4.12.2002 wherein he stated that he had worked on a regular basis as a senior clerk from 1.8.1997, that none of the junior clerks, including those seniors to him, had objected to his being promoted as a senior clerk and, in view of the fact that he was promoted as early as in 1997, no action should be taken at this distant point of time. The 3rd respondent, by order dated 4.1.2003, set aside the petitioner's appointment/promotion as a senior clerk, vide proceedings dated 27.2.1998, treated it as void ab initio holding that his promotion as a senior clerk, vide proceedings dated 29.11.1996, was purely on an adhoc basis. Consequent thereupon proceedings dated 4.2.2003 was issued reverting the petitioner to the post of junior clerk with immediate effect.

The Central Administrative Tribunal, in its order in O.A.164 of 2003 dated 12.9.2003, held that since a regular vacancy of a senior clerk arose only on 1.8.1997, the DPC convened on 29.11.1996 for effecting promotions to the post of senior clerks was obviously purely on an adhoc basis and, since a regular vacancy arose only on 1.8.1997, in order to consider regular promotions of candidates including that of Smt. M. Padma Latha, a DPC should have been convened after or around 1.8.1997 and not prior thereto and that any DPC convened, long before the date of the regular vacancy, could only have been to fill up an adhoc vacancy and not a regular vacancy. The Tribunal directed the respondents to convene a fresh DPC for the purpose, consider the case of all eligible candidates including the petitioner–applicant

and finalize the selections within a period of two months. While directing maintenance of status quo, the O.A. was dismissed. R.A.NO.78 of 2005, filed seeking to review the order of the Tribunal in O.A.164 of 2003 dated 12.9.2003, was also dismissed.

Shri Siva, learned counsel for the petitioner, would attribute mala fides to the 3rd respondent. Learned counsel would refer to the averments in the affidavit filed in support of the writ petition wherein it is stated that, since the petitioner had challenged the order dated 18.4.2002, suspending him from service, by instituting O.A.950 of 2002 which was disposed of directing the petitioner to prefer an appeal against the order of suspension and the petitioner had preferred an appeal on 25.9.2002 and had reminded the respondents, to finalize the appeal, by his representation dated 25.11.2002, the 3rd respondent did not take his approaching the Tribunal in the right spirit, had taken it personally and had started looking into aspects which had become final and had issued the notice dated 29.11.2002 calling upon the petitioner to show cause as to why the order passed nearly five years prior thereto on 27.2.1998, promoting him as a senior clerk on a regular basis, not be cancelled and he not be reverted to the post of junior clerk. Learned counsel would submit that even if this Court would not entertain a plea of malice, as the 3rd respondent had not been arrayed as a respondent eo-nominee, his action would nonetheless stand vitiated by legal malafides. Learned counsel would further submit that there was nothing in the proceedings of the DPC dated 26.11.1996 to show that they had considered the case of the petitioner for appointment as a senior clerk only on an adhoc basis. Learned counsel would state that the proceedings dated

29.11.1996, issued pursuant to the recommendations of the DPC dated 26.11.1996, had mentioned that the appointment of the petitioner as a senior clerk was purely on an adhoc basis, as all appointments in Central Civil Services are initially made on an adhoc basis akin to a temporary appointment in the State Civil Service. Learned counsel would state that, since a regular vacancy of senior clerk arose on 1.8.1997, the respondents were justified in passing the order dated 27.2.1998 regularizing the services of the petitioner as a senior clerk with effect from 1.8.1997 in the vacancy which had arisen consequent upon the retirement of Sri Krishna Reddy on 31.7.1997. Learned counsel would submit that, in any event, since the petitioner had been discharging the duties of a senior clerk on a regular basis for a period of nearly 5 years, it was not open to the 3rd respondent to reopen the orders passed 5 years earlier and set at naught the orders passed on 27.2.1998 regularizing the petitioner's services as a senior clerk. Learned counsel would rely on **M.A. Hameed Vs. State of A.P.**[1] and **M.Bucha Reddy Vs. V.Bhagyamma**[2].

Sri A.Rajasekhar Reddy, learned Assistant Solicitor General, on the other hand, would submit that for filling up the regular vacancy in the post of senior clerk, under the Labour Welfare Organization, Hyderabad Region (Group 'C and Group 'D' posts) Recruitment Rules, 1990, a DPC was required to be constituted. Learned Assistant Solicitor General would submit that since no DPC was constituted to consider all eligible candidates for promotion to the post of senior clerk, and as the earlier DPC meetings were held on 18.6.1996 and 26.11.1996 much prior to the date on which a regular vacancy arose on 1.8.1997, the

recommendations made by the DPC, in these two meetings, was only to fill up the post of senior clerk on an adhoc basis and not on a regular basis. Learned Assistant Solicitor General would submit that there was nothing on record to indicate that the DPC, in its meeting held on 26.11.1996, had sought to fill up the vacancy in the post of senior clerk on a regular basis anticipating that a regular vacancy would arise on 1.8.1997 and the very fact that the order issued on 29.11.1996, appointing the petitioner as a senior clerk on an adhoc basis, was consequent to the recommendations of the DPC dated 26.11.1996, would establish that the DPC had recommended that the petitioner be promoted as a senior clerk only on an adhoc basis, that the petitioner was entitled to continue to hold the post only on an adhoc basis and that he had no right to claim regularization or to be appointed straight away as a senior clerk on a regular basis without the process of selection by a duly constituted DPC.

The plea of malice cannot be examined in the absence of the person, against whom malice is alleged, being arrayed as a respondent eo-nominee (**State Of Bihar Vs. P.P.Sharma**[3]). Allegations of malice are more easily made than established and the degree of proof required to establish malafides is of a very high order. (**E.P.Royappa Vs. State Of Tamilnadu**[4]). Except for a bare allegation that the 3rd respondent had taken the petitioner's challenge to his order of suspension personally, there is nothing on record to indicate that the 3rd respondent was inimically disposed towards him. In any event, in the absence of the 3rd respondent being arrayed as a respondent eo-nominee, this Court is not required to examine the allegations of malafides

leveled against him.

On the question of legal malice, it is useful to refer to **S.R. Venkataraman Vs. Union of India**[5], wherein the Supreme Court observed:-

"……..We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V.D. Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. **Malice in law is however, quite different. Viscount Haldane described it as follows in *Shearer* v. *Shielda* ((1914) AC 808)**:

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently.

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause……" (emphasis supplied)

In order to constitute legal malice, the impugned action must not only be wrongful and intentional, but must have been done without just cause or excuse. To constitute legal malice, the action taken must be in contravention of the law. As noted above the rules, made under the proviso to Article 309 of the Constitution of India, require a DPC to be constituted to effect promotions from the post of junior clerks to senior clerks on a regular basis. As the petitioner – applicant was regularized as a senior clerk without his being subjected to a process of selection, on the DPC being constituted in this regard, his regularization, vide proceedings

dated 27.2.1998, is contrary to the rules and is illegal. The action of the 3rd respondent, in setting aside the appointment made in contravention of the rules, cannot be said to be an action taken contrary to law and as such the plea of legal malice must also fail.

Sri Siva, learned counsel for the petitioner, would contend that since the fact that Sri Krishna Reddy would retire from service on 31.7.1997 was a certainty, the DPC cannot be said to be unaware or not to have anticipated a vacancy arising in the post of senior clerk on 1.8.1997 and it could not, therefore, be said that the DPC, which met on 26.11.1996, had considered the case of the petitioner – applicant for promotion only on an adhoc basis. Learned counsel would submit that, in anticipation of the vacancy which would arise consequent on the retirement of Sri Krishna Reddy on 31.07.1997, the DPC in its meeting held on 26.11.1996, had promoted the petitioner as a senior clerk on a regular basis. However, as the said post of senior clerk could not be filled up on a regular basis till Sri Krishna Reddy retired from service on 31.7.1997, the order of appointment dated 29.11.1996 indicated that the petitioner was appointed as a senior clerk on an adhoc basis. Learned counsel would submit that there was nothing in the proceedings of the DPC dated 26.11.1996 to indicate that the petitioner's case was considered for appointment as a senior clerk only on an adhoc basis.

It is necessary to note that the DPC first met on 18.6.1996 to fill up the vacancy of a senior clerk which arose consequent upon Sri Krishna Reddy being appointed to the post of head-clerk-cum accountant on an adhoc basis to fill up the vacancy caused due to Sri Khader Vali having proceeded on leave. The DPC noted that Smt. M. Padma Latha was the senior most scheduled caste

junior clerk and, on perusal of her annual confidential reports for 5 years, recommended her case for promotion to the post of senior clerk on an adhoc basis. In its proceedings dated 18.6.1996, the DPC noted that, in the event of her declining to accept the offer, the DPC would meet again to decide the eligible candidate who was the next senior most in the department. Consequent to the recommendation of the DPC, in its meeting held on 18.6.1996, the 3rd respondent, vide order dated 20.6.1996, promoted and appointed Smt. M. Padma Latha to the post of senior clerk in the office of the Welfare Commissioner, Hyderabad on an adhoc basis from the date she reported for duty for a period of one year or till such time that an order was issued superceding the present order. Smt. M. Padma Latha was informed that the appointment was purely on an adhoc basis and would not confer on her any right for regularization or to continue to remain as a senior clerk or towards seniority in the cadre of senior clerk and that her services could be terminated at any time without assigning any reason. In reply thereto, Smt. Padma Latha, vide letter dated 27.6.1996, noted that the DPC had promoted her as a senior clerk and, after referring to the order of promotion dated 20.6.1986, stated that she was a widow, that she had to look after her three children who had no guardian except herself and that if she was shifted from Kalichedu to Hyderabad her children would suffer for want of parental guidance, that her daughter was in a marriageable age, that she was in search of alliances and, having this burden on her shoulders, it would be difficult if she was shifted to Hyderabad on elevation of position. Smt. Padmalatha stated that she was not able to accept the chance of promotion offered as at present and

requested that she be offered the chance in the M.M.L.W. organization itself if possible. It is clear from the letter dated 27.6.1996 that Smt. Padmalatha was aware of the recommendation of the DPC dated 18.6.1996 wherein she was promoted as a senior clerk on an adhoc basis. The order of appointment dated 20.6.1996, to which a reference was made by her in her letter dated 27.6.1996, is an order promoting her as a senior clerk on an adhoc basis. It cannot, therefore, be said that Smt. Padmalatha was unaware that she was offered promotion as a senior clerk only on an adhoc basis and not on a regular basis. As noted by the DPC, in its proceedings dated 18.6.1996, in the event of Smt. Padmalatha declining to accept the offer, the DPC had decided to meet again to decide the candidate to be promoted as a senior clerk from amongst the eligible candidates in the seniority list. It is not in dispute that, after the meeting held on 18.6.1996, the next meeting of the DPC was held only on 26.11.1996 wherein the case of Sri M. Suri Babu, who was next in seniority to Smt. M. Padmalatha, was considered and since he was found ineligible the committee decided to promote the next candidate in the seniority list to the higher grade of senior clerk. Consequent to the recommendation of the DPC, in its meeting held on 26.11.1996, the 3rd respondent issued the order dated 29.11.1996 informing the petitioner that he was promoted purely on an adhoc basis to the post of senior clerk with effect from 29.11.1996 or the date on which he reported for duty whichever was later in the existing vacancy caused due to the promotion of Sri Krishna Reddy as a head clerk cum accountant for one year or till such time an order was issued superseding the present order. The petitioner was also informed that the appointment was purely

on an adhoc basis and did not confer on him any right for regular/continued appointment as a senior clerk or towards seniority in the grade of senior clerk and that the adhoc appointment could be terminated at any time without assigning any reason. It is evident that the DPC, which met on 26.11.1996, considered the case of all eligible candidates in the category of junior clerk for appointment as a senior clerk only on an adhoc basis and not on a regular basis. There is nothing on record to show that the DPC had effected promotions in anticipation of the regular vacancy which would arise on 1.8.1997 consequent on Sri K. Krishna Reddy attaining the age of superannuation and had thereby decided to promote the petitioner on a regular basis.

Sri A. Rajasekhar Reddy, learned Assistant Solicitor General, would submit that, consequent upon the order of the Tribunal in O.A.164 of 2003 dated 12.9.2003, a DPC was convened wherein all eligible candidates, including the petitioner, were considered for appointment to the post of senior clerk in the regular vacancy which had arisen as a result of Sri K. Krishna Reddy having retired from service. Learned Assistant Solicitor General would submit that the DPC had recommended the case of Smt. M. Padma Latha, junior clerk, for appointment to the post of senior clerk on a regular basis and consequent thereto proceedings dated 23.9.2003 was issued reverting the petitioner to the post of junior clerk with immediate effect.

Now the judgments relied on behalf of the petitioner.

I n **M.A.Hameed**[1], the appellant was promoted as a temporary upper division auditor (senior auditor) on 11.5.1970 and was regularized in the said post on 1.7.1972. He was further

promoted to the post of District Inspector of Local Funds (Accounts) on 23.8.1971 and continued to work in the said post for more than 10 years. He was finally reverted to the post of Senior Auditor by order dated 8.1.1981. His challenge to the order of reversion was rejected by the Tribunal. On appeal while noting the contention, urged on behalf of the State Government, that the appellant was holding the post of District Inspector of Local Funds on a temporary basis, that he had no right to hold the post and that, as persons senior to him were not readily available he was promoted, the Supreme Court observed:

"…….**If his appointment was temporary or irregular in any manner he should have been reverted within a reasonable period. Even after the reversion order was passed the appellant continued to hold the post till 1985 under the stay order granted by the Tribunal. We are, therefore, of the view that the reversion of the appellant from the post of District Inspector of Local Funds (Accounts) after a period of 11 years has done more harm than good. We, therefore, allow the appeal and set aside the order of reversion**. Mr B. Kanta Rao states that the appellant retired on attaining superannuation in September 1993. Keeping in view the facts and circumstances of this case we are not inclined to give back wages to the appellant from the date of his reversion in the year 1985 till the date of his retirement. The respondent shall fix the pay of the appellant in the rank of District Inspector of Local Fund (Accounts) notionally on the date of retirement for the purpose of post-retirement benefits. The respondents shall fix the revised pension to which the appellant is entitled within three months from the receipt of this order. He shall be entitled to revised enhanced pension from the date of his retirement. The respondent shall pay the arrears of pension to the respondent within further period of one month……"(emphasis supplied).

In **M. Bucha Reddy**[2] the petitioner, a secondary grade teacher, was promoted as a School Assistant with effect from 1.1.1985 in an unaided post. The government extended grant-in-aid to the post of School Assistant with effect from 1.11.1989. The 5th respondent passed orders absorbing the petitioner in the said aided post of School Assistant. He was later promoted to the post

of Head Master with effect from 1.4.1992 in the post admitted to aid on 5.3.1992. The 2nd respondent directed the 3rd respondent – Regional Director to revise the orders of promotion issued in favour of the petitioner promoting him from the post of Secondary Grade Teacher to that of School Assistant and again from School Assistant to Head Master. On these proceedings being challenged, the Division Bench of this Court observed:

".....In our view, even on other grounds also, the order of the 2nd respondent dated 20.3.1999 (sic.3.9.1999) is unsustainable. Under Section 2(12) of the Act read with the rules issued in G.O.Ms.No.1 Education Department dated 1.1.1994, known as A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, the competent authority is the Joint Director of School Education. The competent authority has got powers to grant permission, recognition and regulate the administration of the schools. This power includes approving the actions of the management of the private educational institutions in posting a teacher to an aided post. Section 89 of the Act provides for an appeal against any order passed by an authority to the Director and Commissioner of School Education. **As narrated above, in this case, the 2nd respondent being the appellate authority under Section 89(a) of the Act, himself initiated the inquiry and came to the conclusions which have serious consequences and repercussions with regard to the petitioner, and then directed the competent authority i.e., 3rd respondent herein to pass orders. Thereafter, in our view, everything was a formality devoid of fairness and divorced from principles of natural justice. Further, against the order of the 3rd respondent dated 20.3.1999, the 2nd respondent who had earlier ordered the 3rd respondent to pass order, himself passed the appellate order, that is to say, virtually, the 2nd respondent became the appellate authority against his own order. This, in our view, grossly violates the principles of natural justice, both at the stage of the original authority as well as the appellate authority. Therefore, the order dated 3.9.1999 is non est and void.**

The learned single Judge in his discretion came to the conclusion that it would be unjust to revert the petitioner after a long lapse of time especially when the teachers who are fighting for the post of Head Master reported before this Court in earlier proceedings that they settled the matter out of Court. To our mind, interfering with the settled position after a lapse of ten years is against the well established principles of equity and justice. There are number of cases where this Court as well as the Hon'ble Supreme Court upheld the appointments which could be illegal or did not interfere with the selections and appointments already given effect to.

In **Ashok Kumar Yadav v. State of Haryana (AIR 1987 SC 454)**, the Supreme Court while holding that allocation of 33.3 per cent of marks for viva voce test as arbitrary, however, did not interfere with the appointments made and instead directed the Haryana Public Service Commission to give one more chance to the aggrieved candidates. In **State of U.P. v. Rafiquiddin (AIR 1988 SC 162)**, the Apex Court declined to quash the appointments made by the U.P.P.S.C. to the cadre of District Munsifs though a finding was recorded that the recruitment was contrary to the Rules. Likewise, in **Miss Shainda Hasan v. State of U.P (AIR 1990 SC 1381)** though the age relaxation given to a Principal of a college was held to be illegal, the Hon'ble Supreme Court, still declined to strike down the appointment, but however, directed the Vice-Chancellor of the Lucknow University to grant necessary approval for the appointment of the appellant therein as the Principal of the Girls College, Lucknow. In all these cases, the fact that the respective parties were working in the posts for considerable time weighed with the Hon'ble Supreme Court in not interfering with the appointments……..." (emphasis supplied)

Unlike in the aforesaid judgment of the Supreme Court and the Division Bench of this Court, in the case on hand, the petitioner was informed, in the order dated 29.11.1996, that his promotion as a senior clerk was purely on an adhoc basis and that it did not confer on him any right for regular/continued appointment as a senior clerk or to his seniority in the cadre of senior clerk and that the adhoc appointment would be terminated at any time without assigning any reason. Having accepted such appointment, it is not open to the petitioner now to contend that he was appointed on a regular basis, more so in the absence of any material on record to establish that the DPC had recommended his promotion as a senior clerk on a regular basis in anticipation of a regular vacancy which would arise eight months thereafter. Under the rules, made under proviso to Article 309 of the Constitution of India, a DPC was required to be constituted for considering candidates for promotion to the posts of senior clerks. All eligible candidates were required to be considered. The mere fact that Smt. M. Padma Latha had earlier refused the offer of promotion on

an adhoc basis, as recommended by the DPC in its meeting held on 18.6.1996, did not disentitle her from being considered for promotion as a senior clerk on a regular basis when a vacancy arose on 1.8.1997. Unlike in **M.A.Hameed**[1], where the appointment was irregular, in the present case, the very appointment of the petitioner, as a senior clerk on 29.11.1996, was on an adhoc basis, and as his services could not have been regularized under the rules which required the DPC to consider the cases of all eligible candidates for promotion to the post of senior clerks on a regular basis, his regularization as a senior clerk, vide proceedings dated 27.2.1998, was illegal. The mere fact that he continued to serve as a senior clerk on a regular basis, under the cover of the illegal order dated 27.2.1998, for a period of nearly 5 years, would not confer on him any right to continue to hold the said post contrary to the rules overlooking candidates who were above him in the seniority list of junior clerks. It is also necessary to note that this Court, while exercising jurisdiction under Article 226 of the Constitution of India, does not sit in appeal over orders passed by the Tribunal. The Tribunal has held that the petitioner, who was appointed only on an adhoc basis, was not entitled to claim regularization merely on that score. The order of the Tribunal does not suffer from any illegality necessitating interference of this Court under Article 226 of the Constitution of India. In any event, this Court would only interfere in furtherance of public interest and to prevent injustice being caused. Pursuant to the orders of the Tribunal, the DPC was constituted to consider the case of all eligible junior clerks for promotion as a senior clerk on a regular basis wherein Smt. M. Padma Latha was selected and appointed to the said post. It is represented by Sri A. Raja Sekhar Reddy,

learned Assistant Solicitor General, that Smt. M. Padma Latha has since joined as a senior clerk. Since Smt. M. Padma Latha is admittedly senior to the petitioner, even amongst the scheduled caste candidates in the category of junior clerks, no injustice has been caused to the petitioner herein necessitating interference by this Court.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: 2.1.2007

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RAMESH RANGANATHAN,J

ASP

[1] 2001(9) SCC 261

[2] 1999 (6) ALT 66

[3] AIR 1991 SC 1260

[4] AIR 1974 SC 555

[5] AIR 1979 SC 49